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MAY 06 2019
By ASh Deputy
CLERK OF THE SUPERIOR COURT

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 Alva and Alberta Pilliod,

13 Plaintiffs,

14 vs.

15 Monsanto Company,

16 Defendant.

Case No.: RG17862702

**DECLARATION OF PEDRAM
ESFANDIARY IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
MONSANTO COMPANY'S REQUEST
FOR JUDICIAL NOTICE OF U.S.
ENVIRONMENTAL PROTECTION
AGENCY'S APRIL 2019 GLYPHOSATE
DOCUMENT**

Hon. Winifred Smith
Dept. 21
Trial Date: March 18, 2019

1 I, PEDRAM ESFANDIARY, declare:

2 1. I am an attorney duly licensed to practice law in this State. I am an associate of the law
3 firm BAUM HEDLUND ARISTEI & GOLDMAN PC, a counsel for plaintiffs in the above-
4 captioned matter.

5 2. Attached hereto and incorporated herein by this reference as **Exhibit A** is a true and
6 correct copy of MONGLY14441101-MONGLY14441108.

7 3. Attached hereto and incorporated herein by this reference as **Exhibit B** is a true and
8 correct copy of portions from Todd Rands February 12, 2019 Deposition Transcript.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct. Executed this 6th day of May, 2019 at Oakland, California.

12
13 
14 _____
PEDRAM ESFANDIARY

EXHIBIT “A”

Message

From: Nick Banner [REDACTED]@hakluyt.us.com]
Sent: 7/5/2018 8:24:57 PM
To: RANDS, TODD [AG/1000] [REDACTED]@monsanto.com]
Subject: Notes
Attachments: HAK R 180705 Glyphosate regulation.pdf; HAK R 180705 Dicamba.pdf; HAK R 180705 Reputation.pdf; HAK R 180705 The NIEHS.pdf; HAK R 180705 China 2.pdf; HAK R 180705 China GMOs.pdf

Todd

I hope I've remembered correctly that you're back from holiday tomorrow - I hope Italy was great. To greet your return, find attached a set of notes that look at issues related to both the US and China, following up on our previous discussions. I trust they're of interest, and I'd be very happy to discuss.

Interesting times re Pruitt, though I doubt it'll make much difference re policy.

More to come.

All best.

Nick

Nick Banner

D+1 [REDACTED]
M+1 [REDACTED]

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Hakluyt & Company (North America), is a trading name of Holdingham Group (North America) Ltd, 540 Madison Avenue, Suite 15A, New York, NY 10022

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Pilliod v. Monsanto
EX. 0661

Glyphosate regulation

We heard a unanimous view from senior levels of the EPA (and USDA) that glyphosate is not seen as carcinogenic, and that this is highly unlikely to change under this administration – whatever the level of disconnect between political and professional staffers.

The current political environment favours you

We asked our associates in Washington DC to take the temperature on current regulatory attitudes to glyphosates. The deregulatory and pro-business agenda of the White House is seen as favouring you (note, we refer to “Monsanto” in this note, because that it still overwhelmingly how officials and other interlocutors think of the company). A domestic policy adviser at the White House said, for instance: “We have Monsanto’s back on pesticides regulation. We are prepared to go toe-to-toe on any disputes they may have with, for example, the EU. Monsanto need not fear any additional regulation from this administration.”

And an official familiar with thinking in the Secretary’s Office at the US Department of Agriculture (USDA) commented: “We doubt that there is a regulatory risk to Monsanto on glyphosate. The consensus in the administration that this is not a health risk is solid.”

He contrasted this with the US government’s views on GMOs: “The GMO issue is more complicated, as is seed licensing. The balance of opinion among the administration’s core supporters is more mixed on this front, as shown by the level of opposition in the agricultural community to the Bayer deal, leaving Monsanto with less political cover. In talks with the EU and others on GMO products, however, we stand shoulder to shoulder with Monsanto.”

The EPA still supports the use of glyphosate...

There is little doubt that the EPA supports the use of glyphosate. A former EPA lawyer specialising in pesticides and toxic substances was clear on this, his comments buttressing those of the USDA official: “The WHO study is flawed. It is seen as political and leaving out key information. And it is making the issue more contentious than it probably should be.” A current EPA official shared this assessment: “We have made a determination regarding glyphosate and feel very confident of the facts around it. Other international bodies [referring to the WHO] have reached different conclusions, but in our view the data is just not clear and their decision is mistaken.”

The former EPA lawyer also referred to the EPA’s decision to reverse a ban on the use of Chlorpyrifos, proposed under president Obama. Looking ahead, he suggested:



"The way the EPA under the Trump administration has handled Chlorpyrifos might be instructive in how it would handle new science or new developments related to glyphosate."

Widening disconnected between professional and political staff

As you will know, stakeholders in Washington see a widening disconnected between the professional and political layers of staff within most federal agencies. While this appears to be true of various agencies – Health and Human Services, Commerce, Education, Interior, the Food and Drug Administration, and so on – the EPA may be the leading example of this phenomenon.

Said a partner at a prominent DC law firm with extensive contacts at the EPA:
"Within the EPA we see a total split between the political leadership and the professionals. Climate science is the most obvious area, but environmental pollution, transportation, and toxicology are others.

"In essence, the political leadership favors deregulation and dismisses the expert risk analysis. It is especially averse to theoretical risk analysis, for example on the risks of glyphosate, about which a scientific consensus is yet to form. It is also instinctively dismissive of risk analysis undertaken by international bodies such as the UN and the EU, and NGOs like the Pesticide Action Network."

With regard to glyphosate, in particular, the differences between political and professional staff are sharp. A political appointee in the Office of the General Counsel remarked: "We think the evidence against glyphosate is very unreliable. We see the WHO and EU condemnations of it as part of their wider campaign against GMO crops and as a virtual non-tariff barrier."

The professional staffers' view was represented by one official with the EPA's Office of Pesticide Programs, who told us: "Our periodic review of glyphosate is likely to conclude that it is not a human carcinogen. However, there is little doubt among officials in our office that the science is evolving and that this assessment may come under professional, activist and public pressure in the coming years. Of course, these doubts about glyphosate at the professional level are not shared by the EPA's leadership."

5 July 2018

Dicamba

The EPA is still considering its position on dicamba, and would like to issue formal guidance in August, if it can muster enough evidence by then. Although there is no question of damage to human health, the ambivalence about dicamba among farmers makes the question politically tough for the EPA and USDA. They are watching the issue, and the potential level of crop damage, closely.

The politics of dicamba are less clear than glyphosate, and so is the EPA's stance

Dicamba was described within the EPA as "very much a live issue" for its Administrator Scott Pruitt. And a former EPA lawyer specialising in pesticides and toxic substances told us: "The administration is torn on how to think about dicamba. These situations can cause regulatory paralysis. It's hard to tell what the outcome will be and if the EPA or other agencies will take as strong a stance as they've taken when it comes to glyphosate."

A current EPA official explained the difference, as he saw it, between the dicamba and glyphosate cases, and the potential financial implications for Monsanto: "When it comes to dicamba, I don't think the issue is cancer or human health. It is the application, either used correctly or incorrectly, that accounts for crop damage and financial loss. Because the herbicide's marketing scheme and value are linked with genetically modified seeds that are dicamba-resistant, Monsanto stands to lose billions of dollars in reduced demand for both the seeds and the herbicide."

A senior EPA lawyer added: "In the Midwest and South, dicamba is a top issue for agriculture groups. It is an issue that pits farmer against farmer."

Commenting on the timing of more formal guidance by the EPA, a senior lawyer at the agency observed: "Farmers make purchasing decisions late summer and the Administrator would like to give them regulatory certainty before the purchasing season regarding dicamba-resistant pesticide seeds. That would be the ideal situation, but real time data is hard to achieve. We are looking to have a decision by the end of August. Whether we have the info to make a decision is up in the air."

And referring to the merits of the current litigation against you over dicamba, the EPA lawyer continued: "Dicamba is an interesting beast and, in my estimation, is likely to be a tough one to win. This is not a frivolous case. It may be that there is more legitimacy to this case than the average pesticide litigation."

Whether there is crop damage this year – and, if so, how much – is likely to have a significant bearing on the outcome. An official at the FDA's Center for Food Safety and Applied Nutrition explained: "There are class action lawyers with damages



cases lining up against Monsanto on behalf of crop growers injured by vapour drift. While Monsanto has said that they could keep vapour drift from occurring, it has had a damaging impact on US agriculture. This planting season will therefore be important. Monsanto is claiming the same thing won't happen again and we will know at the end of the summer whether there has been crop damage or not."

The potential repercussions, though, are probably limited

Irrespective of the merits of a potential case over alleged dicamba-related crop damage, the scope for settlement between the various parties means that the feared financial repercussions for you in this instance may be overstated. The former EPA attorney explained: "Regarding dicamba and VaporGrip, there is probably less concern about litigation, because crop damage claims can be settled. Crop damage issues are relatively modest compared to awards associated with human risk determinations. Adjacent crop damage happens commonly, though there is controversy about whether or not VaporGrip's chemical characteristics predispose them to drift over to adjacent farms."

5 July 2018



Reputation

Contacts familiar with the industry, and the politics of regulation, see Monsanto (as the company is still known) as overly aggressive in its approach to public debate, which raises risks in relation to litigation. In the short term, you (and the EPA) are likely to face more legal challenges from NGOs as a result of the EPA's permissive approach to regulation. In the longer term, retailers, among others, feel that glyphosate will have to be phased out – though without saying precisely why.

In the course of speaking to relevant stakeholders about regulatory risks associated with your products, a number of them volunteered views on Monsanto's reputation and standing, and potential risks that arise from this, which may be of interest as you retire the brand name following your merger with Bayer.

A senior executive at Brunswick, the communications and PR group, who has worked on both sides of various Monsanto deals, summarised: "I can understand that Monsanto does not want to concede any legal ground over RoundUp or any other products. But I have less understanding of why it feels it necessary to cultivate a 'bad boy' image in its industry. This dented its chances on the Syngenta deal, for example, and leads to a generally hostile courtroom attitude among jurors in the various cases that it gets involved in – who, I am sure, will be tempted to 'take down' Monsanto on some issue or other just to balance the scales. Even Exxon has softened its 'scorched earth' tactics on climate change."

An experienced agrochemical industry consultant also commented on your image within the industry: "Developments in California on glyphosate are striking a chord with the public. And the dicamba rollout was hardly a model of corporate best practice – even so, Monsanto blamed its own customers. The company regularly goes to 'DEFCON 1' on the slightest challenge from the environmental, academic or scientific community. I am sure Bayer is aware of this and will make adjustments. The issue is one of softening its image, not abandoning its arguments."

Some image management is seen as necessary

In this context, our contacts suggested that Monsanto might be well advised to be more proactive in addressing the views of the company held by various stakeholders, including customers, NGOs, governments, farmers and other agrochemical companies. As the Brunswick executive put it: "Monsanto should do some more enlightened outreach on pesticides and GMO products. The company may think it is self-evidently right on all these fronts, but public opinion, including among its customers in the farming industry and retailers who sell its products, is trending in the opposite direction."



More specifically, we were told that retailers see your recent stance on California's Proposition 65, as counterproductive. Retailers are aware of your decision to challenge the Proposition 65 designation of glyphosate and, for the most part, understand why you have chosen to take this course of action. While no retailer expressed frustration with how you are handling the issue, there was a view that your challenge risks painting you as a poor environmental citizen and could actually accelerate a gradual shift away from glyphosate.

A Costco executive, for example, argued: "Monsanto is making the issue worse by raising the profile of glyphosate. The more aggressive they are, the more ammunition they give the environmental campaign groups to paint them as bad citizens, a reputation that they already suffer from."

Even within the EPA there is unease about your "scientific intransigence"

Even within the EPA, which supports your position on glyphosate, there is frustration over what some see as your stubborn resistance to taking seriously evidence that challenges your thinking. An official in the Office of Pesticide Programs (which is, admittedly, probably less convinced of the non-toxicity of glyphosate) told us: "There is growing unease in this office at what seems like scientific intransigence by Monsanto to give credibility to any evidence that doesn't fit their view. We would agree with them that such evidence is non-conclusive, but that does not mean that it is without basis."

NGOs can be expected to become more aggressive

NGOs, in the belief that regulators have taken an overly relaxed approach to Monsanto, are expected to step up their campaigning efforts. A Senate Democratic staffer who helped negotiate reform of the Toxic Substances Control Act in 2016 ventured: "It is my view that industry across the board faces far more serious litigation risk when regulators are lax than when they are strict. There is virtually no inside way today to stop Pruitt and his political team from handing the keys to industry. That will drive NGOs to become hyper-litigious, challenging every agency policy shift, leaning way forward on launching litigation against any substances suspected of causing harm." A senior staffer for a Republican senator added: "I am not aware of a specific product that represents a serious exposure, but I am already seeing an increase in legal activism from the environmental community, and this represents a potential risk to any chemicals and/or pesticide manufacturer."

A lobbyist with the Natural Resources Defense Council, the environmental advocacy group, confirmed: "With the EPA dramatically loosening the regulatory reins and applying its mandate for risk management so narrowly, the only recourse that the NGO community will have is litigation. Our litigation team has been working overtime and is likely to continue doing so, going after both the EPA and companies."



Continuing, he offered this example of industry practice against which the group would campaign: "Traditionally, before the EPA authorises the application of a product within a certain use and environment that could expose endangered fauna, it seeks a consultation with the Fish and Wildlife Service. But with the support of the current EPA leadership, organisations such as CropLife are trying to get around that traditional review process, and the EPA is acting complicit. In the farm bill that recently passed the Senate, CropLife was trying to insert language that would exempt them from exposure to lawsuits stemming from the Endangered Species Act. This would be precedent setting and would represent a major departure from the status quo. However, it is the kind of thing that the industry has been emboldened to do with the support of the administration's deregulatory agenda."

The greater risk is in the long term

There also appears to be a growing consensus that, regardless of the outcome of specific cases against RoundUp, glyphosate is likely to be slowly phased out of the market in the medium term. An executive at the National Association of Wheat Growers explained: "It appears that glyphosate use is becoming less tenable as a pesticide, and we are encouraging research into alternatives. It's possible that in 10 years time glyphosate could be phased out, but with the active acquiescence of Monsanto."

Interestingly, there was little agreement among our contacts on why exactly they expected glyphosate products to decline in use over time – just agreement that they would. Broadly speaking, there was a belief that one way or another "the science" would eventually militate against glyphosate use. Some retailers also voiced an expectation that consumer preferences for "organic" alternatives (possibly encouraged by NGOs) would affect the market for glyphosate.

Said a senior executive at Home Depot: "There's not likely to be much short-term risk for a product like RoundUp, and the label isn't really going to matter. However, the bigger risk is in the long term. If the science around glyphosate starts to coalesce and spread beyond California, pressure could start to build on products containing glyphosate. We're going to see how things develop."

5 July 2018

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

-----X
IN RE: ROUNDUP PRODUCTS LIABILITY MDL No. 02741
LITIGATION
-----X

* Confidential - Pursuant to Protective Order *

VIDEOTAPED DEPOSITION OF TODD RANDS
PURSUANT TO FED. R. CIV. P. 30(b)(6)
and IN HIS PERSONAL CAPACITY
Washington, D.C.
Tuesday, February 12, 2019

GOLKOW LITIGATION SERVICES
T 877.370.3377 | F 917.591.5672
deps@golkow.com

1 other than the part-time work you've been doing for
2 about a year and a half for Asepticys?

3 A. Yeah, I've got a few consulting projects
4 I've been sort of getting together on a part-time
5 basis.

6 Q. Do you consult for Monsanto?

7 A. No.

8 Q. Who do you consult with?

9 A. With FTI Consulting.

10 Q. Okay. And we're going to talk a little
11 at some point today about FTI Consulting. When did
12 you first start consulting with FTI?

13 A. Just recently, in the last week or so,
14 since I left Monsanto, yeah.

15 Q. Okay.

16 A. Or left Bayer.

17 Q. When did you leave Monsanto?

18 A. I left Bayer on January 26th, I think was
19 officially my last day.

20 Q. Of this year.

21 A. Yes.

22 Q. Okay. What was your position when you
23 left Bayer on January 26th, 2019?

24 A. I had a title that was external affairs
25 lead and strategic transactions counsel, if I've

1 got that right.

2 Q. Did you go directly into that position
3 from whatever your last position at Monsanto was?

4 A. Yes.

5 Q. When did you make that transition where
6 you were no longer a Monsanto employee but you
7 came -- became employed by Bayer?

8 A. I don't know technically when that
9 transition occurred. So the deal was announced, I
10 believe, in '16, and it officially closed in June
11 of '18, if I have the dates correct. I'd have to
12 look at the announcements.

13 Q. Okay. Up until approximately June of
14 2018, your paychecks were from Monsanto; is that
15 fair to say?

16 A. Yeah. I think the Monsanto paychecks
17 continued until the very first of January. There
18 may have even been a first paycheck from Monsanto
19 in January of '19, and then it switched over
20 officially to Bayer. But, yes, Bayer was my
21 employer, I think officially, from June onwards,
22 even though technically the paychecks came from
23 Monsanto.

24 Q. Okay. Did you have any Monsanto stock
25 that got purchased by Bayer as part of the

1 MONGLY09713999)

2 (Exhibit 38 marked for
3 identification: Email
4 correspondence from (topmost) with
5 attachment from T Rands to B
6 Kennedy sent 5/2/2016 re Draft
7 Aderholt LTC Reuters Glyphosate
8 final.docs MONGLY07577414)

9 VIDEO SPECIALIST: The time is 5:31 p.m.,
10 and we're back on the record.

11 BY MR. KRISTAL:

12 Q. Mr. Rands, I've marked as Exhibit 33 an
13 email from a gentleman named Nick Banner with a
14 group called Hakluyt, H-A-K-L-U-Y-T to you, and the
15 subject is "Notes." The Bates number is
16 MONGLY14441101. Do you see this?

17 A. Yes, I see that.

18 Q. And this is an email that you received at
19 the time at Monsanto in the regular course of
20 business and it was maintained in the regular
21 course of business?

22 A. Yes.

23 Q. And Nick Banner was a gentleman who
24 worked for a consulting company that basically did
25 corporate intelligence work?

1 A. Yeah, I'd characterize it as corporate
2 research, but intelligence as well, yes.

3 Q. In other words, he had unidentified
4 sources who would get information and then report
5 to him; Hakluyt would put it in a report and send
6 it to you?

7 A. They had professional networks they
8 maintained where they could go in and ask questions
9 and sort of get unfiltered perspectives from
10 different groups and people.

11 Q. And without having to show you the
12 proposals, you knew going in that they used people
13 who didn't identify themselves as working for a
14 company hired by Monsanto to get the information.

15 A. That was the point. We wanted to make
16 sure that we could hear things about ourselves that
17 people might not say directly to us.

18 Q. Okay. And the attachments to Exhibit 33
19 are reports on a number of different topics by, is
20 it Hakluyt? Is that how it's pronounced?

21 A. I think that's right, Hakluyt.

22 Q. Okay. The first one beginning on page
23 1102 is entitled "Glyphosate Regulation." Do you
24 see that?

25 A. Yes, I see that.

1 attitudes to glyphosate. The deregulatory and
2 pro-business agenda of the White House is seen as
3 favoring you." Do you see that?

4 A. Yes, I see that.

5 Q. And it continues:

6 "A domestic policy advisor at the
7 White House said, for instance, 'we
8 have Monsanto's back on pesticides
9 regulation. We are prepared to go
10 toe to toe on any disputes they may
11 have with, for example, the EU.
12 Monsanto need not fear any
13 additional regulation from this
14 administration.'"

15 That was something that was passed on to
16 you, correct?

17 A. Yes, that was in this report, and you
18 read that correctly.

19 Q. And according to this report, the
20 political environment was favorable to Monsanto
21 with respect to glyphosate, right?

22 A. That's the gist of what their report is
23 summarizing.

24 Q. Exhibit 34 is what's known as a Statement
25 of Work from FTI, and it's signed on October 31st,

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 10940 Wilshire Blvd., 17th Floor, Los Angeles, CA 90024.

(X) E-MAIL OR ELECTRONIC TRANSMISSION: In accordance with the Court's Order (CMO No. 2) governing Case No. JCCP 4953 authorizing all documents to be served electronically upon interested parties via Case Anywhere and its litigation system.

Executed on May 6, 2019 at Los Angeles, California.

Valeriya Adlivankina